

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Core Communications, Inc.)	WC Docket No. 03-171
)	
Petition for Forbearance Under)	
47 U.S.C. § 160(c) from Application of)	
the ISP Remand Order)	

**COMMENTS OF
XSPEDIUS COMMUNICATIONS LLC**

Xspedius Communications LLC (“Xspedius”), by its attorneys and in response to the Commission’s Public Notice,¹ hereby files its comments in support of Core Communications, Inc.’s (“Core’s”) Forbearance Petition, which requests that the Commission use its Section 10 authority to forbear from applying the provisions of the *ISP Remand Order*² to the exchange of ISP-bound traffic between telecommunications carriers.

In its Petition, Core demonstrated that the Commission should use its authority under Section 10 of the Act to forbear from continued application of the rules and regulations promulgated under the *ISP Remand Order*. Core’s Petition stands on its own, and Xspedius will not repeat the arguments made by Core. Rather, Xspedius files these comments to support Core and to inform the Commission that the Bell Operating Companies (“BOCs”) have not lived up to their obligations under the *ISP Remand Order*.

¹ Public Notice DA 03-2362 (July 18, 2003).

² See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98) and *Intercarrier Compensation for ISP Bound Traffic* (CC Docket No. 99-68), Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001), *remanded without vacatur, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (“*ISP Remand Order*”).

Specifically, in spite of obtaining extraordinary relief in the form of significantly reduced intercarrier compensation rates for ISP-bound traffic and the related imposition of a growth cap and new market bar, the BOCs have continued to refuse to pay CLECs, such as Xspedius, amounts properly due for intercarrier compensation, including ISP-bound traffic. In order to collect even the lower rates established by the Commission in the *ISP Remand Order*, Xspedius has been forced to engage in protracted negotiations and regulatory proceedings to obtain what is properly owed.

BOC nonpayment is often accompanied by legal arguments that have no merit, but which a CLEC would have to expend significant time and resources to refute. Moreover, BOC nonpayment extends to intraLATA toll billing, facilities charges, and traditional local and ISP-bound reciprocal compensation payments. When bills are eventually paid, it is often only after repeated collections contacts, and rarely on a regular, timely basis. Often, even those portions of bills that are not disputed are not paid on a timely basis, contrary to the express terms of the parties' agreements. Where disputes are lodged, BOC personnel are not available or understaffed to address dispute issues, so disputes languish and invoices remain unpaid in the meantime. The BOCs have taken the benefit of the *ISP Remand Order* bargain, but have not turned over a new leaf in terms of payment practices. Because these charges relate to traffic coming to Xspedius customers, Xspedius cannot turn off the services for which payment is not timely rendered, as it would under any other circumstance.

At bottom, rather than comply with the *ISP Remand Order*, the BOCs have continued to leverage their "superior bargaining power" to "maximize the amount of the intercarrier compensation payments that they collect, and to minimize the amount of the

intercarrier compensation payments that they make to CLECs.”³ This result is “unwise as a policy matter, and patently unfair.”⁴ Forbearance by the Commission would put a stop to the BOCs’ refusal to live up to their end of the *ISP Remand Order*, by re-establishing the *status quo ante* intercarrier compensation regime. In the alternative and at a minimum, the Commission should consider opening an investigation into the timeliness of BOC payments, the nature of disputes, the staffing of departments responsible for resolving disputes, and the amounts of both disputed and nondisputed payments currently withheld from CLEC competitors.

Respectfully submitted,

/s/

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³ *ISP Remand Order*, ¶ 89.

⁴ *Id.*